IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9385 OF 2005

Shri Gaikwad Gokuladas Shankar ..Petitioner
Vs.
The State of Maharashtra and ors. ..Respondents

Mr. R.V. Bansode for petitioner.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.A. Rodriques for respondent no.5.

WITH
WRIT PETITION NO. 2581 OF 2006

Shri Nikam Ramchandra Yashwant ..Petitioner
Vs.
The State of Maharashtra and ors. ..Respondents

Mr. R.V. Bansode for petitioner.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. Nandu Pawar for respondent no.4.
Mr. R.A. Rodriques for respondent no.5.

WITH
WRIT PETITION NO. 2591 OF 2006

Shri Deshmukh Shivprasad Sarjerao ..Petitioner
Vs.
The State of Maharashtra and ors. ..Respondents

Mr. R.V. Bansode for petitioner.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. Nandu Pawar for respondent no.4.
Mr. R.A. Rodriques for respondent no.5.

WITH
WRIT PETITION NO. 2594 OF 2006

Shri Chougule Gajanan Rajaram ..Petitioner
Vs.
The State of Maharashtra and ors. ..Respondents

Mr. R.V. Bansode for petitioner.

Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. Nandu Pawar for respondent no.4.
Mr. R.A. Rodriques for respondent no.5.

WITH
WRIT PETITION NO. 2837 OF 2006

Shri Patil Ashok Bhagwan and anr. ..Petitioners
Vs.
The State of Maharashtra and ors. ..Respondents

Mr. R.V. Bansode for petitioners.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. Nandu Pawar for respondent no.4.
Mr. R.A. Rodriques for respondent no.5.

WITH
WRIT PETITION NO. 3179 OF 2006

Dadasaheb Appaso Kamble ..Petitioner
Vs.
State of Maharashtra and ors. ..Respondents

Mr. N.V. Bandiwadekar for petitioner.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. Amit Sale for respondent nos.5 and 6.

WITH
WRIT PETITION NO. 3180 OF 2006

Shri Ashok Shankar Kulkarni ..Petitioner
Vs.
The State of Maharashtra and ors. ..Respondents

Mr. N.V. Bandiwadekar for petitioner.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. H.S. Venegavkar for respondent nos.5 and 6.

WITH
WRIT PETITION NO. 3181 OF 2006

Shri Srikrishna Ranganth Deokar ..Petitioner
Vs.

The State of Maharashtra and ors. ..Respondents

Mr. N.V. Bandiwadekar for petitioner.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. H.S. Venegavkar for respondent no.5.

WITH

WRIT PETITION NO. 5618 2006

Ms. Vaishali Annasaheb Latkar ..Petitioner
Vs.
State of Maharashtra and ors. ..Respondents

Mr. N.V. Bandiwadekar for petitioner.
Mrs.Jyoti Pawar, AGP for respondent nos.1 and 2.
Mr. R.G. Ketkar for respondent no.3.
Mr. V.A. Shastry for respondent no.5.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Date : November 23, 2006.

P.C.:

1. All these petitions pray for a common relief, namely, directions to the concerned college, whether aided or unaided, to continue their services on the basis that they are either qualified, appointed prior to 11/12/1999, are required to be protected by the University Grants Commission or otherwise eligible for being retained in the post of Lecturer. Almost all of them are presently in service and by way of ad-interim relief they have been continued in service in some cases.

2. It is well known that the University Grants Commission is the nodal body constituted by the Government of India as the supervising/controling apex body for the higher education under the University Grants Commission Act, 1956. It has framed regulations fixing the minimum qualifications required for appointment of the teaching staff in the Universities and Institutions affiliated to them from time to time. It framed the University Grants Commission (Minimum Qualification Required for Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) Regulations, 2000 (for short the 2000 Regulations) and notified them on 4/4/2000. These regulations were primarily aimed at extending the benefit of the 5th Pay Commission to the teachers at the undergraduate as well as postgraduate levels and also to provide for their career advancement and to fix/revise the educational qualifications requirements. The Government of Maharashtra by its Resolution dated 13/6/2000 adopted these regulations framed by the UGC and it issued a GR on 18/10/2001 adopting the said regulations, but by granting some

concessions/protections to those who were appointed during the period from 19/9/1991 to 11/12/1999. This cut off date of 11/12/1999 has its origin in the Government Resolution of the same date issued by the State Government for implementing the 5th Pay Commission's recommendations with effect from 1/1/1996 and also the Government of India scheme of 1998 which was circulated on 24/12/1998.

3. The requirement of qualifications for appointment as a Lecturer at the PG or UG level teaching set out in the 2000 Regulations and adopted by the Government of Maharashtra states that NET shall remain compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil, degree or have submitted Ph.D. thesis in the concerned subject upto 31/12/1993 are exempted from appearing in the NET examinations. Clause 2(e) of the Resolution dated 18/10/2001 issued by the State Government reads as under and the validity of the said GR fell for consideration before us in the case of Vishwaprakash Laxman Sirsath and ors. vs. State of Maharashtra and ors. **[2002 (4) Bom.C.R. 664]**.

"1. The government decision Higher & Technical Education & Employment Department No.NGC-1794/7945/Vish-4, dt. 22/12/1995 is hereby cancelled.

2. The services of Lecturers who have been appointed between 19/9/1991 to 11/12/1999 on aided, unaided colleges and institutions by the selection committee in those days would not be discontinued on following conditions.

a. All the Lecturers (Non NET/SET) appointed during above period should pass NET/SET examination before December 2003.

b. The Lecturers who would not clear NET/SET examination in the above time limit, they should not be given any other financial advantages (like promotion, senior grade, selection grade) except the increments on the post of Lecturers. Till retirement they will receive pay scale of Rs.8000-13500.

c. Whenever such non NET/SET Lecturers pass the NET/SET examination, their services would be considered for higher grade/selection grade from that date. Similarly, the Lecturers who pass NET/SET examination, their names would be included in seniority list as per the rules.

d. The services of Lecturers government colleges would be continued with the approval of Maharashtra Public Service Commission.

e. These concessions would applicable to the non NET/SET Lecturers who have come in service after 11.12.1999. Similarly, their services should be terminated before completion of probation period.

3. The University Grants Commission has made applicable the rules of 2000 and above referred educational qualifications/ eligibility condition vide notification dt. 4.4.2000. By government decision dt.

13/6/2000 these rules are made applicable to all the Universities and colleges. By this resolution, it is hereby intimated that, after 4.4.2000 appointments who have not passed NET/SET exam should not be made and if the same is done they will not be able to get approval and grant for their posts and if after 4.4.2000 the appointments made the same should be terminated. These orders are binding on all the colleges and if compliance is not made with the same then, concerned college/university will be responsible for the same."

. While upholding the validity of the GR dated 18/10/2001 we held that Clause 2(b) was unconstitutional and the same was directed to be deleted.

4. The University Grants Commission issued a notification on 14/6/2006 and amended the qualifications required for the appointment of the Lecturer at the PG and UG level and as per the said

notification, NET shall a compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET for UG level teaching only.

5. In the 2000 Regulations, the UGC modified the clause of relaxation and thereby vested the full authority with itself alone and the role of the Universities concerned for granting approval was removed. So far as this requirement is concerned, the State Government in its Resolution dated 18/10/2001 has adopted it as it is and, therefore, the earlier scheme wherein the concerned Universities had the authority of granting relaxation is abolished and such a power is exclusively vested with the UGC in exceptional cases. In paras 19 and 20 in the case of Vishwaprakash Sirsath (Supra) we observed as under in regard to this protection clause to be considered by the UGC:-

"19. When the 2000 Regulations were framed

by the commission, the qualifications were maintained and the relaxation Clause was modified thereby vesting the full authority with the commission alone and the role of the universities concerned, for granting approval, was removed. These Regulations have been adopted by the State Government by the Resolution dated 13th June, 2000 but retrospectively. The appointees in the second group i.e. from 4th April 2000 to 13th June 2000 have not brought on record whether any such proposals, as contemplated under proviso 1 of Clause 2, of these Regulations were moved before the U.G.C. for the respective subjects. The amended Regulations have considered the contingencies in different subjects and made a provision for granting relaxation on having been satisifed regarding the existence of such difficulties or lack of infrastructure etc. and that too for a limited period. In subjects like Urdu, Pali etc. where post-graduation studies are conducted by the Dr. Babasaheb Ambedkar Marathwada University at Aurangabad, there is

a possibility that the necessary facilities for NET/SET examinations may not be available or the number of candidates, who have successfully completed these qualifications, is inadequate. In such an eventuality, the comission has provded for granting relaxation. The universities concerned are required to approach the commission making out a case for relaxation in the concerned subjects before the subject appointments are approved by them and if the approvals are granted, without complying with the requirements of the said proviso, obviously the appointments would be illegal being contrary to the Regulations.

20. So far as the third group is concerned, we have no hesitation in our mind to hold that these appointments have been made in flagrant violation of the 2000 Regulations. The State Government virtually issued a warning to the Universities, Colleges and/or Institutions not to appoint Lecturers who did not meet the qualifications, as prescribed by the commission vide Resolution dated 13th

June, 2000. When these appointments were made the amended proviso to Clause 2 of the 2000 Regulations was known to every one concerned, including the appointees, and they ought to be aware that they were not qualified for these appointments uness approval from the U.G.C. was obtained in advance. In none of these three groups the Universities concerned have complied with the requirements of first proviso of Clause 2 of the 1991 Regualtions as well as 2000 Regulations and all the colleges/institutions where the petitioners are working, are aided institutions and, therefore, these Regulations are binding on them."

6. In the said case we had categorised the unqualified teachers i.e. the teachers who did not possess the NET/SET qualfications in the following three categories:-

(a) Appointments from 12//12/1999 to 3/4/2000

(b) Appointments from 4/4/2000 to 12/6/2000

(c) Appointments from 13/6/2000 to 18/10/2001

. We also noted that the Lecturers appointed prior to 12/12/1999 were entitled for protection provided they were appointed by the regular selection committee constituted by the University, even though they did not possess the NET/SET qualifications.

7. In the present petitions the qualifications and dates of joining of the petitioners are as under:-

W.P.No.	Qualifications	Initial date of appointment
9385/05	M.A.	Sept. 2001
2581/06	M.A.	21-06-2001
2591/06	M.A.	21-06-2001
2594/06	M.A.	21-06-1999
2837/06	M.Sc.	01-09-2003
3179/06	M.A.	July, 2000
3180/06	M.Sc.	01-10-1999
3181/06	M.A.	25-07-2000
5618/06	M.A.	01-07-2004 to 30-06-2006

8. All the petitioners, except the petitioner in W.P. No.5618 of 2006, have been appointed by the local selection committee and that too on the academic year to year basis. While the petitioner in W.P. No.5618 of 2006 who belongs to the scheduled caste category was appointed for the first time on 1/7/2004 but by the selection committee constituted by the University. He is not an appointee prior to 11/12/1999 and, therefore, all the petitioners do not get the protection as contemplated in the GR dated 18/10/2001 either by the Universities concerned or by the State Government. Their cases, in our opinion, do not fall in this exceptional category and in any case in the 2000 Regulations the UGC has made it clear that such cases for protection cannot be considered on individual basis and they will have to be considered on institutional basis or on subject basis. Under these circumstances the relief prayed for in these petitions cannot be granted. We have also noted that the petitioners have placed reliance on an order passed by this court (DB) in the case of Ms. Jadhav U.N. and ors. vs. The State of Maharashtra and ors. (W.P. No.1172/02 decided on 18/4/2002 by referring to

the earlier decision in the case of Vishwaprakash Sirsath (Supra). This order dated 18/4/2002 was also placed before another Division Bench of the Aurangabad Bench of this court and it was clarified by the Aurangabad Bench that the protection granted was in exceptional cases and not by way of rule in each case. The Director of Higher Education, therefore, issued a fresh circular informing all the colleges that the protection contemplated under the 2000 Regulations was not in each and every case and, therefore, the petitioners cannot rely upon the order dated 18/4/2002 passed by this court. It is for the UGC to consider the cases as submitted by the Universities concerned and the petitioners cannot pray for a writ of mandamus in that regard. The subject is in the exclusive domain of the UGC.

9. Hence the petitions fail at the threshold and they are hereby rejected summarily.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**